

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 119 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

PANDYA LAGHARAM LAVYASHANKER

Appearance:

MR V.B. GHARANIA, APP for Appellant
MR NS DESAI for Respondent No. 1

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 30/06/2000

ORAL JUDGEMENT

1. The present respondent - Pandya Lagharam
Lavyashanker, filed Regular Civil Suit No. 188 of 1977
against the present appellant, in the court of Civil
Judge (SD) at Amreli, wherein the plaintiff - present

respondent stated that a piece of land was purchased by him by registered deed dated 25.11.1964, which was an agricultural land. Therefore, on applying, he was granted permission by the Collector for construction of a building, vide order dated 9th August, 1976 on certain conditions. Thereafter, the Collector, Amreli, when he found that there were breach of certain conditions, he issued notice to the plaintiff dated 24th July, 1973 so as to show cause why steps should not be taken against the plaintiff for the breach committed. Ultimately, Collector, Amreli, vide his order dated 20th August, 1973, ordered to recover fine of Rs. 60 and composition fee of Rs. 1,822.50 from the plaintiff and to regularise the construction. The plaintiff filed an enquiry application before the State of Gujarat - original defendant No.3 and competent authority vide order dated 21.2.1974 was pleased to allow such application of the plaintiff, so far as it related to levying of composition fee and the matter was remanded to the District Collector, Amreli for deciding the issue afresh. However, again, the District Collector vide his order dated 3rd November, 1974 ordered for recovery of composition fee of Rs. 2,435 from the plaintiff, plaintiff again filed the inquiry application before the Government i.e. defendant No.3, which came to be rejected by the competent authority, vide order dated 5th August, 1975 and against these orders of District Collector and defendant No.3 - State dated 3rd November, 1974 and 5.8.1975 respectively, the plaintiff filed suit for declaration that the Collector had no authority to recover composition fee and therefore such orders were null and void. A permanent injunction was also asked for restraining the defendants from recovering any composition fee from the plaintiff.

2. Defendant No.1 - District Collector, Amreli, No.2 State Government, No.3 Special Secretary, Revenue, Ahmedabad contested the suit on the ground that the Collector had authority to levy composition fee and that the suit was time barred; and that the trial court had no jurisdiction to try the suit under sections 4 and 11 of the Revenue Jurisdiction Act and that the plaintiff was estopped from contending that the Collector was not competent to order levy of composition fee.

3. After hearing both the parties, learned Civil Judge (SD), Amreli, vide his order dated 6th December, 1980 came to the conclusion that the suit of the plaintiff was required to be decreed and the impugned orders so far as it relates to levying of composition fee were held illegal, ultra vires and without jurisdiction

and were set aside. Defendants were restrained by way of permanent injunction from recovering Rs. 2,435/- being the composition fee from the plaintiff. Although, the trial court made it clear that the defendants were entitled to recover the penalty as per the Bombay Land Revenue Code and the Rules and Regulations applicable for the construction and for the breach of the conditions from the plaintiff.

4. Against this order, the defendants filed Regular Civil Appeal before the learned District Judge, Amreli, being Regular Civil Appeal NO. 22 of 1981. Learned Asst.Judge, Amreli, after hearing the parties at length, vide his order dated 28th June, 1983 came to dismiss the Appeal of the defendants and hence this Second Appeal by the original defendants i.e. appellants of First Appeal No. 22 of 1981.

5. Learned AGP Mr. V.B. Gharania on behalf of the appellants was heard at length. Learned Advocate Mr. N.S. Desai for the respondent is not present as he has filed the sick note.

6. While admitting the Appeal, this Court framed the following substantial question of law.

(A) Whether in the facts and circumstances of the case, the lower appellate court has erred in not holding that it had no jurisdiction to try the present suit in view of the provisions of the Section-4 and 11 of the Revenue Jurisdiction Act.

(B) Whether in the facts and circumstances of the case, the lower appellate court erred in not holding that under Section-67 of the Land Revenue Code, the Collector has power to grant permission for N.A. use on payment of even composition fee.

(C) Whether in the facts and circumstances of the case, the lower Appellate Court has erred in not holding the plaintiff was estopped from challenging the levy of composition fee in view of his undertaking before the Collector, Amreli, to pay the composition fee for the regularisation.

(D) Whether in the facts and circumstances of

the case the lower appellate Court was right in holding that there will be no bar of limitation to the plaintiff's suit because the order of the Collector is ultra vires and illegal and the party can treat it as non act.

6. Having considered the arguments advanced on behalf of the appellants and having scrutinised the record of the case, it appears that both the courts below have not erred in concluding that the District Collector, Amreli had no authority to recover composition fee.

7. So far as the first substantial question of law regarding jurisdiction is concerned, it is clear that the suit filed is against the order which the plaintiff contended that the order was void, ab initio and nullity. Such order is neither covered u/s 4 nor covered u/s 11 of the Revenue Jurisdiction Act. The orders which were complained of were the orders without jurisdiction and were not contemplated under the Bombay Land Revenue Code or the Rules or Regulations made thereunder and, therefore, both the courts below rightly came to the conclusion that the trial court had jurisdiction to entertain the suit and that the suit was not barred on account of the provisions of Sections 4 and 11 of the Revenue Jurisdiction Act.

8. The next substantial question relates to the main controversy between the parties. This has been discussed in detail by both the courts below. The controversy which arose was regarding the power of District Collector to impose composition fee. The crucial question which arose is whether the District Collector had authority and was empowered to levy composition fees. The present appellants failed to show any provisions of law, under which, the District Collector was empowered to levy composition fee. Collector had power to resort to eviction proceedings and levy of penalty as well as NA fee, in case of breach of conditions. Sec. 66 and Sec. 67 are eloquent on this issue. Appellants has vehemently contended before the court that there are Government Resolutions by which the District Collectors were competent to recover composition fee. The controversy led to proposition that whether the Government Resolutions in the form of executing directions can take the place of substantial law. The courts below relied upon the decision of the Supreme Court in the case of STATE OF ASSAM vs. BASANTA KUMAR, reported in AIR 1973

SC 1252, wherein the Supreme Court observed that the executive directions cannot take place of substantial law and hence when there is no provision empowering the District Collectors to recover composition fee, the District Collector cannot be held competent to levy composition fee from the plaintiff in pursuance of the executive directions and both the courts below rightly held that the Collector had no power or authority of law or jurisdiction to recover composition fee from the plaintiff.

9. The next substantial question of law is regarding the principle of estoppel. It was contended that the plaintiff filed an undertaking to the effect that he would be subject to any order passed by the Collector for regularising of construction, which is in breach of condition, which included levy and recovery of composition fee. It was further contended that the plaintiff is now estopped from contending that the Collector was not empowered to levy composition fee in view of the undertaking which he had furnished to the Collector. The contention of the appellants, obviously, is not well founded. The celebrated principle of law is when any undertaking is given in ignorance of rights of the parties and which is against the law, the performance of the same cannot be enforced from the party offering such undertaking and, therefore, the party making undertaking for the same reasons, cannot be estopped from contending and challenging the illegal action, for which it might have given undertaking. Both the courts below had placed reliance on the decision of the Apex Court in the case of SHRI KRISHNA vs. KURUKSHETRA UNIVERSITY, reported in AIR 1976 SC 376 and held that the plaintiff could not be estopped from contending that the order passed by the District Collector imposing composition fee was illegal and void even if he had filed undertaking, subjecting himself to such composition fee.

10. The last substantial question of law is regarding limitation. It was contended that in view of Article 100 of the Limitation Act, the suit ought to have been filed within one year, which has not been filed and suit was clearly barred by law of Limitation and both the courts below erred in concluding that the suit was within the period of limitation. It is also an established proposition of law that when the order of an authority is void ab initio, and illegal, the same is non est. Affected parties are not bound to file a suit to set aside the same. Only when such non est orders are attempted to be enforced, parties can seek remedy and, therefore, the question of Limitation, as contended, is

not well founded. Both the courts below, therefore, rightly held that suit was not barred by limitation in view of Article 100 of the Limitation Act.

11. In view of the above discussion, there is no substance in this Appeal and the same is required to be dismissed. In the result, Appeal is dismissed with no order as to costs.

(J.R. Vora, J.)

p.n.nair